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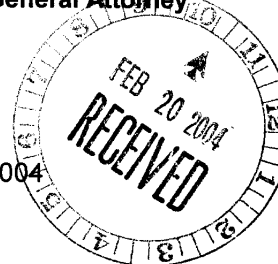
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February 17, 2004

via fax 202-565-9002 and Airborne Express - 6 pages

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: STB Docket No. AB-290 (Sub-No. 168X), Norfolk and Western Railway
Company - Abandonment Exemption - Between Kokomo and Rochester In
Howard, Miami and Fulton Counties, IN

Dear Mr. Williams:

The original and ten copies of this letter, plus an extra copy to be date stamped as received by the Board and returned to us in the enclosed stamped, self-addressed enveloped, will follow by Airborne Express. Norfolk Southern Railway Company ("NSR") supports the request of Indiana Trails Fund ("ITF"), that the Board issue a Notice of Interim Trail Use or Abandonment ("NITU") with respect to that part of the line of railroad between Milepost 75.5 near Peru, IN and Milepost 1-95.6 at or near Rochester, IN that was the subject of this proceeding. We expect ITF's letter to be filed on or about the date this letter is sent to the Board. Norfolk Southern Railway Company is the successor by merger to Norfolk and Western Railway Company ("NW"), the original petitioner in this proceeding.

After NSR filed the petition for exemption in this proceeding, ITF, along with Hoosier Rails to Trails Council, sought a trail use negotiation condition with respect to the entire line. NSR consented to the issuance of this condition and to negotiate an interim trail use agreement with ITF. However, in a decision served May 14, 1996, the Board required that the trail use negotiation condition (Notice of Interim Trail Use or Abandonment or "NITU") request be re-filed for the Peru-Rochester segment of the line, after Indiana Hi-Rail Corporation's ("IHRC's") trackage rights over that part of the line were formally discontinued in its bankruptcy proceeding. Although the parties otherwise proceeded in

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accordance with the terms of the Board's decision, and the Board later was advised of the United States Bankruptcy Court's approval of the IHRC Amended Plan of Reorganization providing for the discontinuance of the IHRC trackage rights in another proceeding, no formal request to issue a NITU for the Peru-Rochester segment was made in this proceeding. ITF, supported by NSR, now requests that this technical defect in the proceeding be remedied. We suggest that the proceeding may still be considered open and can be discontinued with the issuance of a NITU for the Peru-Rochester segment.

The Board's decision served May 14, 1996 in this proceeding and its companion docket, Docket No. AB-289 (Sub-No. 3X), *Central Railroad Company of Indianapolis - Discontinuance of Service Exemption - Between Kokomo and Argos in Howard, Miami, Fulton and Marshall Counties, IN*, authorized NSR's predecessor, NW, to abandon that portion of the subject line between Milepost I-57.2 at or near Kokomo, IN and Milepost I-74.2 at Peru, IN, to discontinue service over the segment of the line between Milepost I-74.2 at Peru, IN and Milepost I-95.6 at or near Rochester, IN and to abandon that segment, "provided that the abandonment process as to this segment may not be completed until IHRC's [Indiana Hi-Rail Corporation's] discontinuance of its trackage rights has been authorized." (Sheet 5, paragraph 2 of May 14, 1996 decision.) Indiana Hi-Rail Corporation had been operating as a Chapter 11 debtor under the jurisdiction of the United States Bankruptcy Court for the Southern District of Indiana. IHRC's had filed its bankruptcy petition in *In Re: Sagamore National Corporation and Indiana Hi Rail Corporation*, Case No. IP94-08502-RLB-11, filed November 15, 1994 and December 9, 1994, and consolidated December 19, 1994.

In the Board's decision served May 14, 1996, the Board accepted the requests for a negotiation condition for interim trail use/rail banking of the subject line that were timely filed by ITF and the Hoosier Rails to Trails Council, but only as to that part of the subject line over which Indiana Hi-Rail did not have trackage rights. In view of the continued existence of IHRC, and its trackage rights over the Peru-Rochester part of the line, and the fact that IHRC was under the jurisdiction of the U. S. Bankruptcy Court, the Board required NW to inform HRTTC and ITF if and when IHRC's trackage rights over the line segment between Peru, IN and Rochester, IN were terminated so that ITF could negotiate for trail use for the entire line, if it so chose. The Board stated that ITF should re-file the trail use negotiation condition request as to the Peru-Rochester segment after IHRC's trackage rights were terminated. The Board indicated that the Board would issue a NITU for that segment of the line "if and when we are so notified" of the trackage rights discontinuance. (Sheet 6, paragraph 7 of May 14, 1996 decision.)

On sheet 4 of the May 14, 1996 decision, the Board stated: "To facilitate our action on the request for trail use, N&W must inform the trail user if and when IHRC's trackage

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rights are discontinued. We reserve jurisdiction to impose a trail use condition if an appropriate request is made following IHRC's discontinuance. If no trail use condition is sought within 10 days after N&W notifies the trail user of IHRC's discontinuance, then N&W may complete the abandonment process as to that portion of the line." NSR did notify the trail user of the discontinuance of the trackage rights, did not consummate the abandonment (except as to a short segment of the line described below) and negotiated a trail use agreement with ITF. The Board was advised of the discontinuance of the Court's approval of the discontinuance of the trackage rights in a separate proceeding, as further explained below, but no further filing was made in this proceeding. The Board's statement that a further request to the Board to issue a NITU for the Peru-Rochester segment should be made in this proceeding apparently was overlooked.

The Trustee of Sagamore National Corporation and Indiana Hi-Rail Corporation filed an Amended Plan of Reorganization dated December 12, 1996, and amended September 5, 1997, with the United States Bankruptcy Court for the Southern District of Indiana in *In Re: Sagamore National Corporation and Indiana Hi Rail Corporation*, Case No. IP94-08502-RLB-11, on or about September 5, 1997 (attached). The Plan provides in part, on pages 5-6:

"3. STB approval. NW, Indiana Hi-Rail and C&NC Associated Investors, and its designees, have agreed that the Trustee will petition the Bankruptcy Court under the provisions of 11 U.S.C. 1172 for the fixing of a time for an advisory opinion of the Surface Transportation Board, which will in effect, solicit the Surface Transportation Board's acquiescence and approval of the following findings and orders:

1) IHRC's discontinuance of the IHRC operating trackage rights, between mileposts I-74.2 and I-108.6, permitting NW's abandonment between IO-58.5 and I-95.6;...."

The IHRC Trustee presented the Amended Plan to the Board in STB Finance Docket No. 33491, *Indiana Hi-Rail Corporation Trustee's Amended Plan of Reorganization and Disclosure Statement*, but in a decision served November 5, 1997, the Board rejected IHRC's filing as untimely and incomplete. The IHRC Trustee secured a Bankruptcy Court order extending the time for the Board to issue an advisory opinion of the transactions anticipated in the Amended Plan of Reorganization, "if it so chooses," to December 15, 1997. The Trustee resubmitted the matter to the Board under the same docket number, but the Board had sufficient time and information only to serve a partial advisory opinion on December 12, 1997. Most notably, the Board rendered no opinion on the discontinuance of the IHRC trackage rights between Mileposts I-74.2 and I-108.6 because of the insufficient record on this matter in the Board proceeding.

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As the Board noted in footnote 4 of the May 14, 1996 decision: "Under the Bankruptcy Code, 11 U.S.C. 1170, the court has jurisdiction over the abandonment of bankrupt railroads, and we advise the court whether the abandonment or discontinuance is in the public interest." We read the Board's reference to the approval and effective date of the Amended Plan, including the discontinuance of the IHRC trackage rights, on sheet 3 of the decision served January 30, 1998 in Finance Docket No. 32162, *Indiana Hi-Rail Corporation - Lease and Operation Exemption - Norfolk and Western Railway Company Line Between Rochester and Argos, IN And - Exemption From 49 U.S.C. 10761, 10762 and 11144* as a recognition of the Court's actions that included approval of the Amended Plan that included the discontinuance. The Board stated: "the Bankruptcy court has approved this sale transaction, among others, and directed that it go forward on December 18, 1997."

In any event, the U. S. Bankruptcy Court served a notice on January 23, 1998 of "the order of confirmation of Chapter 11 plan [that] was entered in the above captioned case on 01/15/98." (The IHRC/Sagamore National bankruptcy proceeding, however, remains open.)

NSR and ITF obviously were aware of the developments with respect to the IHRC bankruptcy and proceeded to negotiate for trail use. NSR and ITF reached an agreement covering transfer of 34.2 miles of the line, nearly its entire length, including most of the Peru-Rochester segment, to ITF under the National Trails System Act. The parties reached this agreement during the negotiation period specified by the Board in a decision served in this proceeding on March 27, 1998 that extended the period. NSR's legal, planning and real estate personnel were heavily engaged in significant volumes of work on the Conrail control transaction at this time and it is possible that only an oral agreement may have been reached with ITF. In any event, the agreement was performed by NSR, which ultimately conveyed 34.2 miles of the line to ITF by three deeds dated January 21, 1999.

One of NSR's files contains the handwritten, undated note: "I-57.2 to I-58.5, reclassify as industrial track; I-58.5 to I-96.5...transfer to Indiana Trails Fund; I-72.7 - I-75.5 exception to trails group - fully abandoned. Advised STB." While this may not show that an additional NITU was requested in this proceeding for the Peru-Rochester segment, and none was issued, it does further show NSR's intent with respect to disposition of the line.

NSR was not required to abandon the subject line during any specific period to time or to file a notice of consummation with respect to the abandonment of this line because the regulation requiring such notices was not yet in effect. See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex

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Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997. So even if NSR had advised ITF of the discontinuance of the IHRC trackage rights over the Peru-Rochester segment and ITF had not wished to negotiate for trail use or request an expanded NITU for that segment, NSR would not have filed a further notice of consummation of the abandonment of the segment with the Board. In fact, NSR's expressed intention and actions from the outset of this proceeding clearly showed that it never intended to consummate the abandonment of almost the entire line, except for a small segment of the line that was excluded from the conveyance to ITF, if it could reach an agreement with ITF for trail use of the line. This intention is clear from NSR's original consent to negotiate for interim trail use as to the entire line as well as its actions in reaching an agreement with ITF subsequent to the Bankruptcy Court order accepting the IHRC Amended Plan. NSR negotiated an interim trail use agreement with ITF for nearly the entire line as promptly as possible after the Amended Plan of Reorganization in the Indiana Hi-Rail Chapter 11 bankruptcy proceeding, that provided for the discontinuance of IHRC's trackage rights on the segment of the line between Milepost I-74.2 at Peru, IN and Milepost I-95.6 at or near Rochester, IN, had been implemented and confirmed. Therefore, there was no break in the continuity of the negotiations or period of time where NSR's acted with an intent to abandon the subject segment of the line. The Board had been advised of approval of the IHRC discontinuance in the Amended Plan, albeit by IHRC itself in a different proceeding. Nonetheless, NSR's actions were consistent with an effort to transfer the line for trail use, not to abandon it.

NSR submits that under the circumstances described above, the Board could not have lost jurisdiction over this matter because NSR clearly did not consummate abandonment of most of the line. Indeed, as already noted, the Board specifically "reserved jurisdiction to impose a trail use condition." NSR could have abandoned the line, but did not do so. The parties proceeded in good faith and as promptly as possible under the circumstances surrounding the Conrail control case to negotiate a trail use agreement as the Board contemplated they could do after the U. S. Bankruptcy Court's approval of the discontinuance of the IHRC trackage rights. We regret the need to bring this old matter to the Board's attention, but NSR believes the Board can remedy the oversight in this proceeding, and close the matter, simply by issuing a NITU which would cover the Peru-Rochester segment, except for the portion between Mileposts I-74.2 and I-75.5, which NSR has abandoned.

Under the circumstances, any alternative handling of this matter could only cause an unnecessary expenditure of time and effort. The same final result will be reached because NSR did not consummate abandonment of the Peru-Rochester, IN portion of the subject line to be added to the NITU in this proceeding. In order to insure that the continuity of the proceeding be recognized, NSR suggests that the Board issue a NITU for the

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Peru-Rochester, IN segment of the subject line in response to ITF's request, *nunc pro tunc*, as of the March 27, 1998 service date of the Board's decision extending the negotiation period in this proceeding.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jim R. Paschall".

James R. Paschall

cc via fax 317-237-9425
Mr. Richard Vonnegut, President
Indiana Trails Fund, Inc
PO Box 402
Indianapolis, IN 46206-0402

cc: Mr. J. T. Moon
Mr. T. W. Ambler